



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Ben Harvey, City Manager

MEETING DATE: July 18, 2018

SUBJECT: Resolution to Add a Ballot Measure to Increase the Uniform Transient Occupancy Tax (TOT) on November 6, 2018

CEQA STATUS: Exempt from the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., as it can be seen with certainty that there is no possibility that the activity authorized may have a significant effect on the environment.

RECOMMENDATION

Adopt a Resolution to add one ballot measure to increase the Uniform Transient Occupancy Tax at the Municipal Election, which was consolidated with the General Election, set for November 6, 2018.

DISCUSSION

The City of Pacific Grove (City) currently imposes a uniform Transient Occupancy Tax (TOT) on visitors who stay overnight in City hotels, motels or short-term rentals for less than thirty days, which has been set at 10%. The TOT in neighboring areas ranges from 10 - 12%. TOT is often called a hotel tax, and is paid by “transients” for the privilege of renting hotel rooms or other lodging in the City on a short-term basis of 30 days or less. The City’s TOT also applies to short-term rentals rented through rental operators and third-party booking services, including, online travel companies such as Expedia, Orbitz, Airbnb, Vacation Rental by Owner (VRBO), etc. TOT is calculated as a percentage of the cost of the room or lodging.

The City Council has determined that financial circumstances of the City require enactment of this measure to increase the TOT from 10% to 12% to preserve the public peace, health and safety of the community, to avoid service disruptions, and to avoid permanent impairment of community services. The TOT shall be calculated based upon the total rent paid by the guest, not on a discounted rate that may be paid to a hotel operator by online travel companies or other third party booking agents.

If adopted, this measure will amend portions of Chapter 6.09 of the Municipal Code to increase the City’s TOT imposed on the rent paid for short-term rentals from 10% of the rent paid to 12% and to apply the TOT to the total rent “paid by the transient” for the short-term rental. The current TOT amount is 10% of the rent “charged by the operator.” The measure would also amend certain definitions in the Municipal Code to address online travel companies and other third-party bookings.

This “general” tax shall be enacted solely to raise revenue for any and all municipal purposes, and shall be placed into the City’s General Fund. The operative date for the increase to the TOT, if approved by a majority of the voters, shall be January 1, 2019.

On June 20, 2018, the City Council approved a resolution calling the Municipal Election for the mayor and Councilmembers and placing an initiative on the ballot. This measure shall be part of the Municipal Election, consolidated with the General Election, scheduled for November 6, 2018.

The City Clerk shall be authorized to publish a copy of this Resolution in a newspaper of general circulation once within fifteen (15) days after the adoption of this Resolution, and provide services and supplies in connection with the election as required by law.

The Resolution clarifies that City Council shall, in accord with Elections Code Section 9282, exercise its right to author and sign ballot arguments and rebuttal arguments regarding the measure, and delegates that power to the Mayor.

The Resolution also directs the City Attorney to provide an abbreviated statement of the ballot measure, and on or before August 16, 2018, to submit an impartial analysis of no more than 500 words as to each ballot measure pursuant to section 9203 of the California Elections Code.

The last day to submit arguments for or against the proposed measures is August 16, 2018. The last day to submit rebuttal arguments for or against the proposed measures is August 23, 2018.

This proposed Resolution is exempt from the CEQA, Public Resources Code section 21000 et seq., as it can be seen with certainty that there is no possibility that the activity authorized may have a significant effect on the environment.

OPTIONS

1. Do nothing.
2. Provide alternate direction.

FISCAL IMPACT

1. The estimated cost of consolidating the next election (November 6) with the Monterey County Elections Office is \$6-\$8 per voter or \$58,206 to 77,608. This estimated cost, provided by the Monterey County Elections office in January 2018, is for the City’s local candidates, and any City measure and/or initiatives.
2. An increase in the TOT from 10 – 12% of the amount paid by the transient is estimated to yield an additional \$1,135,000 in revenues annual. This estimate is based upon updated projections for the period ending in Fiscal Year 17/18, and **DOES NOT** take into consideration any adjustments for the short-term rental license lottery held earlier this year, or the proposed citizen’s short-term rental initiative that will be on the November 6, 2018 ballot.

GOAL ALIGNMENT

Fiscal Sustainability

ATTACHMENTS

1. Resolution

RESPECTFULLY SUBMITTED:



Ben Harvey
City Manager

REVIEWED BY:



David C. Laredo
City Attorney

RESOLUTION NO. 18-XXX

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF PACIFIC GROVE
SUBMITTING TO THE ELECTORS A MEASURE
TO AMEND CHAPTER 6.09 OF THE MUNICIPAL CODE
TO INCREASE THE UNIFORM TRANSIENT OCCUPANCY TAX**

WHEREAS, the City Council determines and declares that financial circumstances of the City of Pacific Grove (City) require enactment of measures to increase tax revenue to the City to preserve the public peace, health and safety of the community, to avoid the work stoppage and/or service disruptions that shall result from additional staff cuts and reductions in force, and to avoid permanent impairment of community services provided by the police, museum, recreation and other cultural resources within the City; and

WHEREAS, the City currently imposes a uniform Transient Occupancy Tax (TOT) on visitors who stay overnight in City hotels, motels or short-term rentals for less than thirty days; and

WHEREAS, the City uniform TOT has been set at ten percent; and

WHEREAS, neighboring cities on the Monterey Peninsula and the County have transient occupancy tax rates that range from ten to twelve percent; and

WHEREAS, the City would like to clarify the TOT is calculated based upon the total rent paid by the guest, and not on a discounted rate that may be paid to a hotel operator by online travel companies or other third party booking agents; and

WHEREAS, the transient occupancy tax proposed for enactment by this resolution shall be enacted solely to raise revenue for any and all municipal purposes, and shall be placed into the City's General Fund, is not intended for regulation, and shall constitute a "general tax"; and

WHEREAS, the voters of the State of California amended the state constitution, adding Article XIII C, which requires that all new or increased special taxes be submitted to the voters prior to becoming effective, and

WHEREAS, the operative date for the increase to the Uniform Transient Occupancy Tax, if approved by a majority of the voters, shall be January 1, 2019; and

WHEREAS, this Ordinance is exempt from the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. This resolution shall become effective immediately following passage and adoption thereof.

SECTION 3. The ordinance submitted to voters as provided by this Resolution shall take effect if and only if it is approved by a majority of the electors casting ballots at the November 6, 2018 election, and if so, said ordinance shall immediately amend Chapter 6.09 of the Pacific Grove Municipal Code, but the operative date for the increase to the Uniform Transient Occupancy Tax shall be January 1, 2019.

SECTION 4. The City Council of the City of Pacific Grove does hereby submit to the voters at the next election, an ordinance, which reads as follows:

The text set forth in existing Section 6.09.010, Definitions, of Chapter 6.09 of the Pacific Grove Municipal Code shall be changed by the deletion of all text shown in ~~strikeout text~~ and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

6.09.010 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

“Hotel” means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structures or portion thereof, except that no lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure shall be deemed a hotel, when less than 10 percent of the annual dollar value of the rentals it earns derives from transient occupancy, and when it does not by signs or other advertising invite transient occupancy.

“Occupancy” means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

“Online Travel Company” means any person, whether operating for profit or not for profit, which enables transients to purchase occupancy of space in a hotel via the Internet, or by similar electronic means.

“Operator” means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than an employee, ***including but not limited to an online travel company***, the managing agent shall also be deemed an operator for the purpose of this chapter and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

“Person” means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

“Rent” means the consideration ***charged to the transient (including but not limited to, room rates, service charges, retail markup, commissions, processing fees, cancellation charges, attrition fees or online booking fees)***, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

“Tax administrator” means the city clerk.

“Transient” means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered.

The text set forth in existing Section 6.09.020 of Chapter 6.09 of the Pacific Grove Municipal Code shall be changed by the deletion of all text shown in ~~strikeout text~~ and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

For the privilege of occupancy in any hotel ***on and after January 1, 2019***, each transient is subject to and shall pay a tax in the amount of ~~10~~ ***twelve*** percent (***12%***) of the ***total*** rent ~~charged~~ ***paid by the transient*** by the ~~operator~~. The tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the

transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the tax administrator.

SECTION 5. All tax proceeds deriving from the provisions of Chapter 6.09 shall be a "general tax," the revenue from which shall be placed into the City's General Fund and be available for any and all municipal purposes.

SECTION 6. The ballot format for the proposal to authorize amendment of Chapter 6.09 of the Pacific Grove Municipal Code shall be substantially as follows:

CITY MEASURE ()

Shall the measure amending the Pacific Grove Municipal Code be adopted to increase the City of Pacific Grove's Transient Occupancy Tax (TOT), imposed on occupants of short-term rentals such as hotel rooms, from 10% to 12%, and apply TOT to total rent paid by a guest for the short-term rental, including online travel companies, which is anticipated to raise \$1,135,000 annually and will continue until repealed by City Council or City voters?

Yes (_____)

No (_____)

SECTION 7. If any provision, section, paragraph, sentence, clause, or phrase of this measure, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution, or any part thereof, or its application to other persons or circumstances.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this ___day of July 2018, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

s

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney